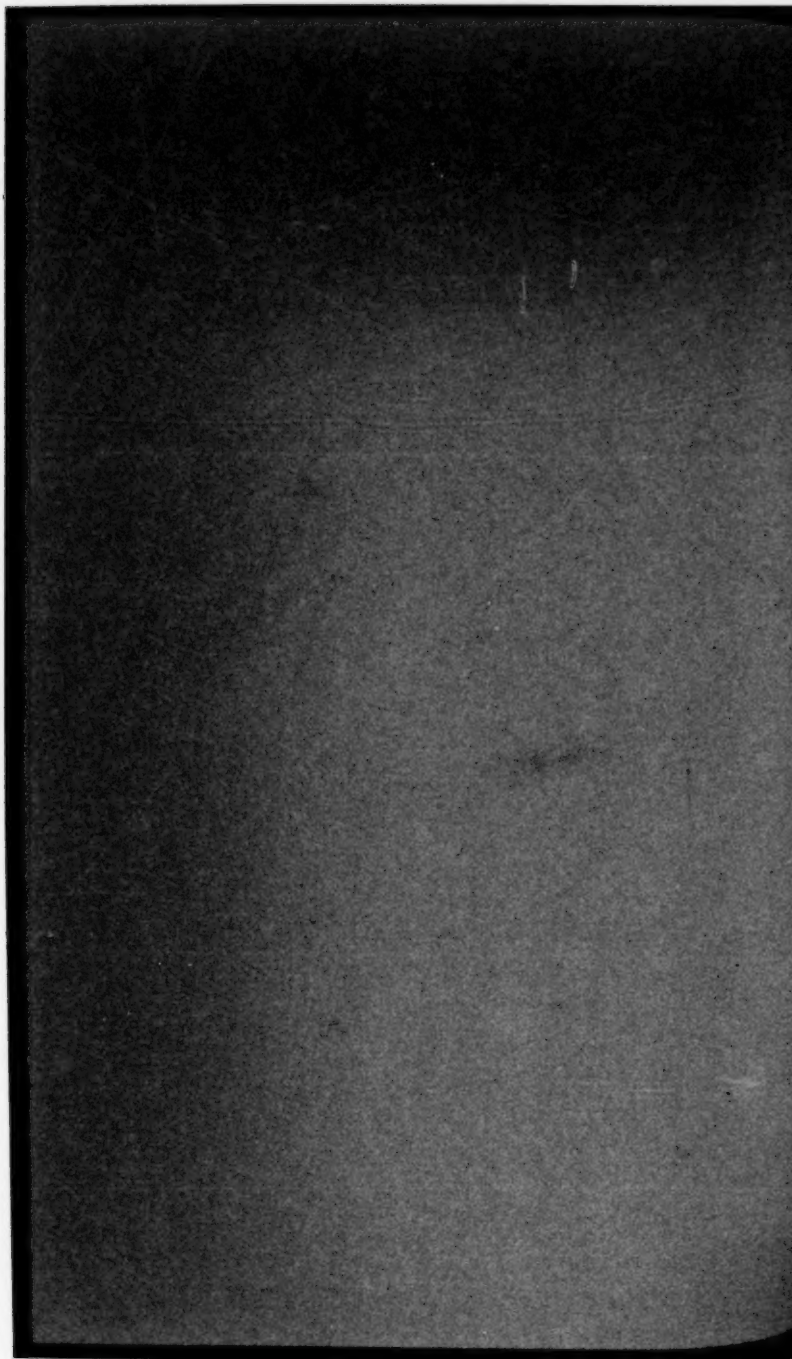

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Supreme Court of the United States.

OCTOBER TERM, 1948.

No.

BETHLEHEM STEEL COMPANY

v.

ARTHUR J. MOORES.

BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS THE APPEAL.

Introductory Statement.

This brief is submitted pursuant to the provisions of paragraph 3 of Rule 7 in opposition to the appellee's Motion to Dismiss the Appeal on the ground that this Court is without jurisdiction to consider it.

Since the jurisdictional basis for the appeal is set forth in the appellant's Jurisdictional Statement, this brief will not duplicate what appears there. It is intended merely as a brief reply to the appellee's Statement Opposing Jurisdiction.

Argument.

The appellee's argument in opposition to jurisdiction amounts to an assertion that—

> "by the very nature of the court structure in the Commonwealth of Massachusetts there can be no appeal to the Supreme Court of the United States except under unusual circumstances not present here"—

and to a contention that—

> "there is nothing in the record allowing appeal in conformity with the requisite provisions of the appeal statute."

We shall take up these two points in this order.

Appeals to This Court from the Courts of Massachusetts.

Little need be said in reply to the novel proposition that the right of appeal to this Court from the courts of the Commonwealth of Massachusetts is in some way more restricted than is the right to appeal from the courts of other jurisdictions. The governing statutes are the same. There is obviously no warrant and no conceivable reason for according to judgments rendered in the Commonwealth of Massachusetts a higher degree of finality and greater immunity from review by this Court than is given to judgments from other jurisdictions. Whatever "the very nature of the court structure in the Commonwealth of Massachusetts" may be, neither the Judicial Code nor the rules of this Court discriminate against appellants from Massachusetts.

It is true that the situation in Massachusetts in certain types of cases is somewhat complicated with reference to

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the question whether the rescript of the Supreme Judicial Court or the final decree rendered by the Superior Court after such rescript should be the "final judgment" appealed from. See *Cole* v. *Violette*, 319 U.S. 581. It was this uncertainty, and not, as suggested in appellee's Statement in Opposition, any doubt as to the record properly showing jurisdiction, that caused appellant's counsel to secure allowance of its appeal by both the Chief Justice of the Supreme Judicial Court and the Chief Justice of the Superior Court.

Other contentions advanced by the appellee in this connection do not require detailed discussion. That the "original final decree" of the Superior Court (*i.e.*, the decree from which an appeal was taken to the Supreme Judicial Court) was "entered without benefit of assistance from the Supreme Judicial Court" is true, but immaterial. That decree is not appealed from. The final decree of the Superior Court after rescript, which is appealed from, was certainly rendered in pursuance to and in the light of the rescript and opinion of the Supreme Judicial Court. That it was "error of itself" not to have the appeal allowed by a Justice of this Court is obviously a misconception. As for appellant's entitling the appeal in this Court, this seemed the proper practice for several reasons, such as the fact that the state court judge allowing the appeal acts under authority given him by federal statutes and rules and that his allowance of the appeal is not the action of the court over which he presides, and the further fact that the citation on appeal commands the appellee's appearance in this Court. In a number of cases decided by this Court on appeal from Massachusetts in the past, the appeal papers were entitled in this Court. In any event, the caption of a case serves for convenience of reference only and would not prejudice the appeal even if

erroneous, as long as the appeal papers are otherwise proper in respect to substance and form.

JURISDICTION OF THE APPEAL IN THIS CASE.

The appellee contends that the opinion of the Supreme Judicial Court—

> "discloses no question concerning the validity of the Massachusetts Workmen's Compensation Act, Mass. G. L. (Ter. Ed.) C. 152, the only statute of the Commonwealth involved herein. The question presented is one of applicability of the Act to the facts in the case. It has never here been asserted nor does the record show that Act to be repugnant to the Constitution of the United States."

In answer to this, we merely refer to what was said in appellant's Jurisdictional Statement in respect to the fashion in which the federal point was raised and the rulings which give jurisdiction. In the very language of *Wilson* v. *Cook*, 327 U.S. 474, 480, quoted in appellee's Statement in Opposition, the jurisdictional requirement was satisfied since—

> "the record shows that the question of the validity under federal law of the state statute, *as construed and applied*, has either been presented for decision to the highest court of the state, . . . or has in fact been decided by it, . . . and that its decision was necessary to the judgment." (Emphasis the appellee's.)

In fact, the federal question in this case, as shown by the record, was *both* presented to and decided by the high-

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est court of the state, and the opinion of the Supreme Judicial Court—

> "shows that that court ruled on the validity of a state statute under the laws and Constitution of the United States." (*Ibid.*, at 481.)

Conclusion.

It is the belief and therefore the position of the appellant that it is entitled to review of the case by this Court on appeal and as a matter of right. But in the event that this Court should conclude against its jurisdiction on appeal for any reason not now apparent to us, we urge upon this Court the substantial grounds for review set forth in our Jurisdictional Statement as ample reasons why the Court should then consider the case on certiorari pursuant to the provisions of Title 28, United States Code, Section 2103.

Respectfully submitted,

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